

Rocky Mountain Health Maintenance Organization, Incorporated

Submission of Plan of Conversion

For Review by the Colorado Attorney General

Dated: September 7, 2016

Respectfully Submitted by Counsel for Rocky Mountain Health Maintenance Organization,
Incorporated:

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I. Parties

This Submission of Plan of Conversion for review by the Colorado Attorney General (“Submission”) is made by Rocky Mountain Health Maintenance Organization, Incorporated (“RMHMO”), a Colorado non-profit corporation recognized by the Internal Revenue Service as an organization that is exempt from taxation under Section 501(c)(4). RMHMO is a health plan carrier which has been issued a certificate of authority by the Colorado Division of Insurance (“CDI”) to operate as a health maintenance organization (“HMO”). RMHMO has three wholly-owned or controlled operating subsidiaries, including (1) Rocky Mountain Healthcare Options, Inc. (“RMHCO”), a taxable Colorado non-profit corporation licensed as a hospital, medical-surgical and health services corporation; (2) CNIC Health Solutions, Inc., a taxable Colorado corporation that provides administrative services for medical, dental and consumer-driven self-funded type health plans; and (3) Rocky Mountain Health Management Corporation, a Colorado for-profit corporation that employs all of RMHMO’s and RMHCO’s employee workforce (collectively, the “Subsidiaries”). The organizational structure of RMHMO and its affiliated entities is attached as Exhibit 1.

Rocky Mountain Health Plans Foundation (“Foundation”) is a Colorado non-profit corporation formed in 1997 to provide greater access to health care services, to improve health outcomes for patients, to educate the public about community health care and wellness issues, and to more effectively utilize health care resources for people across Colorado, including those outside of RMHMO’s membership. The Foundation is recognized by the Internal Revenue Service as an organization that is exempt from taxation under Section 501(c)(3). More detailed information about the history of the Foundation and its mission and purpose are set forth in Exhibit 2.

United HealthCare Services, Inc. (“United”) is purchasing the stock of RMHMO under a Stock Purchase Agreement dated July 22, 2016 (“Purchase Agreement”), subject to regulatory approvals. A copy of the Purchase Agreement is attached hereto as Exhibit 3. Under terms of the Purchase Agreement, the Foundation will become the sole shareholder of RMHMO and will receive the purchase price proceeds resulting from the transaction. The transaction described in the Purchase Agreement is referred to herein as “Transaction”.

II. Jurisdiction of Colorado Attorney General – Cy Pres Doctrine

The Attorney General is authorized to review this Submission pursuant to the Attorney General’s common law authority over charitable trusts. *See* C.R.S. §§ 25.5-5-412(14)(c) and 24-31-101(5); *In Re: Estate of Vallery*, 883 P2d 24 (1993).

Pursuant to the principles of *cy pres* and trust oversight, in the past the Attorney General’s scope of review has focused on the following factors: demonstrating that continued operation is impossible or impracticable without the sale of the assets; whether fair market value is being received for the assets of the nonprofit charitable corporation; whether the Transaction will preserve the assets of the charitable nonprofit corporation for the charitable purposes to which

they were dedicated; and whether the Transaction is in the public interest. Thus, this Submission specifically addresses those factors.

III. Insurance Regulatory Review

RMHMO and RMHCO are licensed by and subject to the jurisdiction of the CDI. Because the transaction with United constitutes a change of control of RMHMO and RMHCO, the transaction is subject to the review and approval of the CDI under C.R.S. § 10-3-801 *et seq.*¹

United has commenced the regulatory review process and has filed a Form A Statement. A copy of the Form A statement is attached hereto as Exhibit 4.

IV. Transaction – Overview

RMHMO and the Foundation are both parties to the Purchase Agreement with United. Under the Purchase Agreement, prior to Closing and after regulatory approvals are obtained, RMHMO will convert to a for-profit Colorado corporation and the Foundation will be the sole shareholder of RMHMO. As soon as is reasonably practicable after such conversion, United will pay the Purchase Price to the Foundation in the manner provided for under the Purchase Agreement.

A summary of the transaction is set forth in Exhibit 4, the Form A filed by United with the CDI.

Additionally, attached as Exhibit 5 is a letter from Pershing Yoakley & Associates, P.C. (“PYA”) providing an opinion of fairness, from a financial standpoint, related to the Transaction (“PYA Opinion”).² The PYA Opinion contains a more detailed summary of the Transaction.

Prior to the Closing, RMHMO will convert from a Colorado tax-exempt, non-profit corporation to a Colorado for-profit corporation (“Conversion”). Upon completion of the Conversion, the Foundation will own all of the issued and outstanding shares of RMHMO’s capital stock and indirectly own all of the capital stock or membership interests of RMHMO’s Subsidiaries. The Foundation will then sell all shares of RMHMO to United for \$36.5 million (“Base Purchase Price”) plus or minus certain customary purchase price adjustments as more fully set forth in the Purchase Agreement. Subject to regulatory approvals, the transaction is currently anticipated to close on January 3, 2017.

¹ As a health maintenance organization licensed under C.R.S. § 10-16-401 *et seq.*, RMHMO is subject to 10-16-421.5, which triggers the approval process under C.R.S. §§ 10-3-801 through 10-3-803.5 for a change of control.

² A complete copy of the Exhibit 5 is being submitted to the Attorney General with a Vaughn Index. However, certain information in Exhibit 5 is protected under Colorado law as highly confidential, proprietary and/or trade secrets. A public version of Exhibit 5 is also being submitted that has the confidential, proprietary and secret information redacted. RMHMO has no objection to the redacted version of Exhibit 5 being made publicly available along with this Submission. RMHMO reserves all rights and remedies with respect to the redacted information.

The agreed upon Base Purchase Price is \$36.5 million. There is a closing adjustment to the Base Purchase Price to extent that the closing surplus of RMHMO is greater than or equal to 180% of the Authorized Control Level (“ACL”) Risk Based Capital, which as of December 31, 2015, was \$38,134,836. A \$7.5 million escrow will be set aside from the Base Purchase Price and held by a third party escrow agent in order to satisfy potential indemnity claims that United may have under the Purchase Agreement, if any. All amounts remaining in the escrow, including any interest accrued thereon, will be released to the Foundation two years after closing of the transaction.

Under the Purchase Agreement, United will be solely responsible to pay at Closing at its own cost and expense, an amount necessary to satisfy RMHMO’s unaccrued Company Employee Payables as defined in the Purchase Agreement. Any such payments by United for unaccrued Company Employee Payables will not reduce the Purchase Price calculation. The Company Employee Payables are primarily comprised of retirement deferred compensation obligations including accelerated vesting obligations due to the change in ownership. Thus, to the extent the change of control triggers new liabilities that had not previously been accrued under RMHMO’s ordinary course of business, those new liabilities are paid by United and not by the proceeds to be paid to the Foundation.

V. Valuation

As set forth in Exhibit 4, PYA performed an independent valuation analysis of RMHMO for purposes of negotiating the potential transaction with United. As stated in Exhibit 5, PYA estimated RMHMO’s value to be within the range of \$32.7 million to \$40.3 million on a net equity basis. Therefore, PYA concluded that the \$36.5 million purchase price fell within its fair market value range for RMHMO.

PYA’s detailed Valuation Analysis is attached as Exhibit 6.³ Certain sections of the Valuation Analysis are submitted as confidential, proprietary and trade secret information subject to protection under Colorado law and as identified on the Vaughn Index. RMHMO reserves all rights and remedies related thereto.

³ A complete copy of the Exhibit 6 is being submitted to the Attorney General with a Vaughn Index. However, certain information in Exhibit 6 is protected under Colorado law as highly confidential, proprietary and/or trade secrets. A public version of Exhibit 6 is also being submitted that has the confidential, proprietary and secret information redacted. RMHMO has no objection to the redacted version of Exhibit 6 being made publicly available along with this Submission. RMHMO reserves all rights and remedies with respect to the redacted information.

VI. Conversion Documents

Attached as Exhibit 7 is the Plan of Conversion for RMHMO which describes the corporate conversion of RMHMO and the governance documents of the Foundation. The Plan of Conversion includes the following:

Exhibit A (Statement of Conversion)

Exhibit B (Rocky Mountain Health Plans Foundation Governance and Transition Plan)

Exhibit C (Amended and Restated Articles of Incorporation of Rocky Mountain Health Plans Foundation)

Exhibit D (Amended and Restated Bylaws of Rocky Mountain Health Plans Foundation)

The Plan of Conversion and its exhibits have been reviewed and approved by the RMHMO Board of Directors and by the Foundation Board of Directors, subject to the necessary regulatory approvals.

VII. Foundation – Independence Post-Closing

After Closing, the Foundation will be independent from United and RMHMO.

RMHMO has appointed the initial Board of Directors of the Foundation to become effective upon the Conversion. The Foundation's prospective board members are identified on Exhibit 8. The Board will be broad based and include persons in rural and Western Colorado including Mesa County with experience in nonprofits and foundations, persons with special knowledge or experience in fields related to health care and health related education and services advanced by the Foundation (including physician services, geriatrics, nutrition and wellness, community health and behavioral health); persons who are community leaders and educational leaders in rural and Western Colorado including Mesa County, and persons who are representative of groups such as seniors, Medicaid Recipients, medically disadvantaged persons, and minorities. One of the identified Board members is currently on the Foundation Board as an independent Board member and would continue as a Board member to facilitate the transition. One spot on the new Board will be reserved for a person appointed by the Attorney General to be a non-voting ex-officio member of the Board.

After the Conversion, the Foundation's permanent governing Board will be independent; RMHMO and United will have no power to remove, appoint, or approve the appointment of Foundation Board of Director members, or any other power or authority over the affairs or activities of the Foundation.

The Foundation is taking steps to prepare for the transition to an independent entity. The Board has approved a Governance and Transition Plan, a copy of which is included with the Plan of Conversion and attached hereto as Exhibit 7.B. Consistent with that Governance and Transition Plan, the Foundation has engaged its own legal counsel, Bernie Buescher, Esq. of Ireland Stapleton to coordinate the transition of the entity. Additionally, as set forth in Exhibits 7.C and 7.D. hereto, the Foundation's Articles and Bylaws have been amended and restated to become effective upon the Conversion.

VIII. Analysis

A. Continued operation is impossible or impracticable without the sale of the assets.

Colorado law specifically authorizes a non-profit entity to convert to a for-profit entity and specifically authorizes a change of control of an HMO subject to regulatory review and approval by the CDI. RMHMO and the Foundation are complying with this process which should satisfy this factor.

In addition it is not practical for RMHMO to continue with its current mission without this transaction. RMHMO has been committed to improving the lives of their enrollees and the health of Colorado for many years. RMHMO currently serves the needs of more than 230,000 enrollees through one of the largest provider networks in the state. Due to rapid changes that are occurring in the health insurance market, RMHMO has incurred losses in recent years. As publicly reported in its recent annual statements, RMHMO lost \$13.5 million in 2014 and \$21.8 million in 2015, and its total capital and surplus declined by more than 56% over that period. While RMHMO remains a competitor in the Western Colorado marketplace, RMHMO practically needs more capital to assist it to remain a strong competitor in the market for health care coverage.

Among other things, to assist with RMHMO's surplus, after closing and the change of control, United will make a capital contribution to RMHMO that will increase the company's Total Adjusted Capital to 300% of its Authorized Control Level RBC. We believe it is in the best interest of consumers that RMHMO remain a strong competitor in the Western Colorado marketplace, and the capital contribution will help ensure this result. The payment of proceeds to the Foundation, will also assist in helping to provide assistance to communities related to health care issues. This will help continue the mission of RMHMO.

B. Fair Market Value will be received for the assets of the nonprofit charitable corporation.

PYA performed a detailed analysis and valuation of RMHMO and estimated RMHMO's valuation to be in a range of \$32.7 million to \$40.3 million. PYA further confirmed that the Base Purchase Price of \$36.5 million falls within that range. In addition, the only deductions

from this Base Purchase Price are based upon the level of RMHMO's surplus as of Closing (as described above), indebtedness of RMHMO entities, transaction related expenses, taxes, and the transaction escrow amounts. The amount of proceeds received by the Foundation will either increase or decrease depending on RMHMO's surplus as of the Closing Date. To the extent RMHMO's surplus is greater than the Surplus Target Amount, the amount of proceeds paid to the Foundation will increase. Conversely, to the extent RMHMO's surplus is less than the Surplus Target Amount, the amount of proceeds paid to the Foundation will decrease. Therefore, the amount of proceeds paid to the Foundation will self-adjust based upon the surplus of RMHMO as of the Closing Date. PYA concluded that the proposed transaction is fair for RMHMO and the Foundation, from a financial point of view and the Foundation will be receiving fair market value for the stock of RMHMO.

C. The transaction preserves the assets of the charitable nonprofit corporation for the charitable purposes to which they were dedicated.

The mission of the Foundation is to facilitate philanthropic support for innovative health care approaches, to be a catalyst in developing new programs which improve the health of Coloradans, to provide greater access to the health care services, to improve the health outcomes of patients, and to more effectively utilize health care services.

The Foundation Board will consist of members who are all independent of RMHMO and United. The Board members are all community members who are broadly representative of the geographic area served by RMHMO. After Closing the Board will be self-perpetuating. The bylaws of the Foundation will provide that the Attorney General will be allowed to designate an ex officio, nonvoting board member to fully participate on the Foundation Board for a period of five (5) years after the conversion. The board member can report to the Attorney General any information that the board member sees fit provided that such disclosure does not violate any fiduciary duty of the board member.

For a five (5) year period after Closing, the Foundation will file with the Attorney General's office conflict of interest questionnaires completed by Foundation Board Members evidencing that the Board Members are free from conflicts with RMHMO and United. The Foundation will also prepare, and make easily available to the public, annual reports of its grant making from the previous year, compensation, if any, to its board members, and administrative costs (i.e. staff salaries) for so long as the Foundation is in existence. The annual report will be posted on the Foundation's website, and the Foundation will maintain the previous five years of reports on its website on an ongoing basis.

D. The Transaction is in the public interest.

The Transaction is in the public interest. The infusion of capital into RMHMO will allow RMHMO to continue to be a strong competitor in the health care coverage market in Colorado.

The Transaction then preserves for the citizens of Colorado the value of RMHMO by placing proceeds of the sale into the Foundation. The Foundation will facilitate the provision of services related to health care in the areas previously served by RMHMO. The Board of the Foundation will be broadly representative of the community and will be independent from RMHMO and United. The Attorney General will have a role in overseeing the activities of the Foundation to ensure that the activities are consistent with its mission.

IX. Proposed Public Comment Period

RMHMO acknowledges that part of the review process will include a public comment period. RMHMO requests that the public comment period be completed to help facilitate Closing by December 31, 2016 if at all possible.

X. Requested Relief

RMHMO respectfully requests that the Attorney General review this Submission, consider any subsequent submissions and public comment made subject to and in accordance with Colorado law and enter a decision approving the Conversion and finding that (1) continued operation is impossible or impracticable without the sale of the assets; (2) fair market value is being received for the assets of the nonprofit charitable corporation; (3) the transaction preserves the assets of the charitable nonprofit corporation for the charitable purposes to which they were dedicated; and (4) the transaction is in the public interest.

Additionally, RMHMO respectfully requests such other relief from the Attorney General appropriate under the circumstances and subject to and in accordance with Colorado law for RMHMO to implement the Purchase Agreement.

Exhibits:

The following exhibits are attached hereto and incorporated herein by reference.

Exhibit 1 –Organizational Chart

Exhibit 2 – History of the Foundation

Exhibit 3 – Stock Purchase Agreement

Exhibit 4 - Form A

Exhibit 5 – PYA Fairness Opinion (un-redacted version also submitted)

Exhibit 6 – PYA Valuation Analysis (un-redacted version also submitted)

Exhibit 7 – Plan of Conversion Documents

Exhibit A (Statement of Conversion)

Exhibit B (Rocky Mountain Health Plans Foundation Governance and Transition Plan)

Exhibit C (Amended and Restated Articles of Incorporation of Rocky Mountain Health Plans Foundation)

Exhibit D (Amended and Restated Bylaws of Rocky Mountain Health Plans Foundation)

Exhibit 8 – Prospective Board Members of the Rocky Mountain Health Plans Foundation